IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO. 72 OF 2004

IN

SUIT NO. 1 OF 2004

...

Divyesh P. Shah ...Plaintiff

v/s.

The Panchratna Co.op.
Hsg.Society Ltd. & Ors. ...Defendants

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Mr.B.B.Saraf with Ms.Nita Solanki i/b Kiran Jain & Co. for the Plaintiff.

Mr.Gabriell Pillai for Defendant No.1.

Mr.Vinod Mahadik for Defendants Nos. 2 & 3.

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CORAM: D.K.DESHMUKH, J.

DATED: 31st March,2005

P.C.:

1. This Notice of Motion is taken out by the Plaintiff claiming certain interim reliefs. The Plaintiff has filed this suit claiming a decree of possession in relation to the premises. According to the Plaintiff, the suit is filed under Section 6 of the Specific Relief Act.

2. A preliminary objection has been raised to the maintainability of the suit by the Defendant No.1/ Co.op. Housing Society in view of provisions of Section 91 of the Co.operative Societies Act. In view of this objection, in terms of the provisions of Section 91 of the Co.operative Societies Act following preliminary issue has been framed.

> Does the Defendant No.1 prove that in terms of sub-section 3 of Section 91 and Section 163 of the Maharashtra Co.operative Societies Act 1960 this Court does not have the jurisdiction to entertain the suit?

3. Both the parties have not led any oral evidence. I heard the learned Counsel for both sides. For deciding this issue, firstly, reference has to be made to the provisions of Section 6 of the Specific Relief Act because according to the Plaintiff it is under this Section that this civil suit has been filed. Section 6 reads as under:

> 6. Suit by person dispossessed of immoveable property.- (1) If any person is dispossessed without his consent of immoveable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

(2) No suit under this section shall be brought-

(a) after the expiry of six months from the date of dispossession; or

(b) against the Government.

(3) No appeal shall lie from any order or decree passed in any suit instituted under this section, not shall any review of any such order or decree be allowed.

(4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

4. Perusal of Section 6 quoted above shows that it provides that if a person is in possession of immoveable property and if he is deprived of that possession otherwise than in due course of law, he

can file a suit for recovery of the possession, notwithstanding any other title that may be set up in such suit. The next provision of law which is relevant is Section 91 of the Maharashtra Co.operative Societies Act. It is sub-section (1) and sub-section (3) of Section 91 which is relevant. They read as under:-

> 91.Disputes.- (1) Notwithstanding (anything contained) in any other law for the time being in force, any dispute touching the constitution, (elections of the committee or its officers other than elections of committees of the specified societies including its officer), conduct of general meetings, management or business of society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated or by a creditor of the society, (to the Co.operative Court) if both the parties thereto are one or other of the following:
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> (a) a society, its committee, any past

committee, any past or present officer, any part or present against, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society, or Liquidator of the society, (or the Official Assignee of a deregistered society);

(b) a member, past member or a person claiming through a member, past member or a deceased member of society, or a society which is a member of the society (or a person who claims to be a member of the society);

(c) a person other than a member of the society, with whom the society has any transactions in respect of which any restrictions or regulations have been imposed, made or prescribed under section 43, 44 or 45, and any person claiming through such person;

(d) a surety of a member, past member or

deceased member, or surety of a person other than a member with whom the society has any transactions in respect of which restrictions have been prescribed under section 45, whether such surety or person is or is not a member of the society.

(e) any other society, or the Liquidator of such a society (or de-registered society or the Official Assignee of such a de-registered society)

(3) Save as otherwise provided under (sub-section (2) of section 93), no court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in sub-section (1).

5. Perusal of the above quoted provisions shows that a dispute relating to the managent or a business of a co.operative society between the co.operative society and member of that society lies to Co.operative Court. Sub-section (3) of Section 91 in clear terms ousts the jurisdiction of all

courts except the Co.operative Court to entertain any suit in respect of any dispute referred to in sub-section (1). One more provision, in my opinion, which is relevant is provision of Section 163 of the Maharashtra Co-operative Societies Act. Sub-section (1) of Section 163 of the Maharashtra Co.operative Societies Act reads as under:-

> 163.Bar of jurisdiction of Courts.- (1) Save as expressly provided in this Act, no Civil or Revenue Court shall have any jurisdiction in respect of-
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> (a) the registration of a society or its by-laws, or the amendments of its by-laws, or the dissolution of the committee of a society, or the management of the society on dissolution thereof; or
>
> (b) any dispute required to be referred to (the Co.operative Court) for decision;
>
> (c) any matter concerned with the winding up and dissolution of a society.

6. Perusal of above quoted provisions of sub-section (1) of Section 163 shows that except when it is expressly provided in the Act, the jurisdiction of civil court to entertain any suit in relation to any dispute required to be referred to the Co.operative Court for decision is expressly ousted. The learned Counsel appearing for the Plaintiff relied on a judgment of the Supreme Court in the case of Mansukhlal Dhanraj Jain and ors, v/s. Eknath Vithal Ogale, (1995) 2 Supreme Court Cases 665. that judgment considers the question of maintainability of suit filed under Section 6 of the Specific Relief Act in view of the provisions of Section 41 of the Presidency Small Cause Courts Act. The Supreme Court has quoted the provisions of Section 41 of the Presidency Small Cause Courts Act in paragraph 11 and in paragraph 12, the Supreme Court has observed thus:

> 12. A mere look at the aforesaid provision makes it clear that because of the non-obstante clause contained in the

section, even if a suit may otherwise lie before any other court, if such a suit falls within the sweep of Section 41(1) it can be entertained only by the Court of Small Causes. In the present proceedings we are not concerned with the provisions of sub-section (2) of Section 41 and hence we do not refer to them. For applicability of Section 41(1) of the Small Cause Courts Act, the following conditions must be satisfied before taking the view that jurisdiction of regular competent civil court like City Civil Court is ousted.

(i) It must be a suit or proceeding between the licensee and licensor; or

(ii) between a landlord and a tenant;

(iii) such suit or proceeding must relate to the recovery of possession of any property situated in Greater Bombay; or

(iv) relating to the recovery of the licence fee or charges or rent thereof.

The learned counsel also relies on a judgment of the Division Bench of this Court in the case of Shiavax C. Cambata v/s. Sunderdas Ebji, 1950 Bombay Law Reporter 381. In so far as the present case is concerned, in my opinion, the judgment of the Supreme Court in Mansukhlal Jain's case and the judgment of the Division Bench in the case of Shiavax Cambata, which is referred to above, are not relevant. The Supreme Court and the Division Bench were considering the provisions of Presidency Small Cause Courts Act. In so far as the present case is concerned, in my opinion, provisions of sub-section 3 of Section 91 and sub-section (1) of Section 163 are clear that if on the basis of averments made in the plaint, it can be said that the dispute in the suit is between the member of the Co.operative society and the Co.operative Society and it relates to the managment or business of the Co.operative society, then there is a complete ouster of the jurisdiction of the civil court. The suit relates to premises in a building. Defendant No.1 is Co.operative Housing Society, therefore, obviously the subject matter of the suit relates to the

management and the business of the society, and the Plaintiff has in a clear terms averred in the plaint that he is a member of the society. It is clear from the averments in the plaint that the Plaintiff also claims to be in possession of the premises as purchaser of the premises and is holding the premises as owner thereof in the building of a co.operative society. Therefore, averments in the plaint clearly show that what is raised in the plaint is a dispute relating to the management of the Co.operative society and the dispute is between the member and the Co.operative Housing Society and therefore, in terms of provisions of sub-section 3 of Section 91 and sub-section 1 of Section 163, jurisdiction of the civil court to entertain the suit is clearly ousted. The issue, is, therefore, answered in the affirmative. It is held that the suit as framed and filed is not maintainable in this court.

7. In the result, therefore, suit is dismissed. The Plaintiff is directed to pay costs of the Defendant, as incurred by the Defendant.

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